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Human resources management

Implementation of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission

Report of the Secretary-General

Summary

The present report, submitted in response to the request of the General Assembly contained in resolutions 60/238 and 61/244, provides information on the implementation of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission.



I. Introduction

1. The present report is submitted in response to the request made by the General Assembly in its resolutions 60/238 and 61/244 that the Secretary-General provide information on the implementation of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission.
2. The Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission (hereinafter "the Regulations") were adopted by General Assembly resolution 56/280 of 27 March 2002, and promulgated by the Secretary-General in his bulletin ST/SGB/2002/9 of 18 June 2002.
3. The present report will address the two issues that have arisen since the Regulations were promulgated, namely (a) privileges and immunities and (b) applicability of the financial disclosure requirement to officials other than Secretariat officials, and experts on mission.

II. Privileges and immunities

Background

4. The basic documents regulating the scope of the privileges and immunities of officials of the Organization are the Charter of the United Nations (Article 105), the 1946 Convention on the Privileges and Immunities of the United Nations (articles V and VII), headquarters agreements with host States and, where applicable, the 1961 Vienna Convention on Diplomatic Relations. Certain Member States hosting Offices of the United Nations have adopted national laws and regulations which can also be considered as a source of privileges and immunities for officials of the Organization.
5. Article 105, paragraph 1 of the Charter provides that "the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes". In order to give effect to Article 105 of the Charter, the General Assembly adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter "the General Convention") on 13 February 1946. Of particular relevance are sections 20 and 21 of the General Convention to which 153 Member States are Parties and are thus bound thereto. The sections read as follows:

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any officials in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence

of any abuse in connection with the privileges, immunities and facilities mentioned in this article.

6. Officials other than Secretariat officials are persons who, at the direction of the legislative organs, occupy certain positions, or perform specific functions for the Organization on a substantially full-time basis. These officials are not in a separate category under the General Convention, but their names are submitted by the Secretary-General to the host country together with those of Secretariat officials who are staff members. These persons have been consistently referred to by the General Assembly as "officials other than Secretariat officials".

7. The General Assembly, by its resolution 3188 (XXVIII) of 18 December 1973, approved "the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations to the members of the Joint Inspection Unit and the Chairman of the Advisory Committee on Administrative and Budgetary Questions".

8. Article VI, sections 22 and 23 of the General Convention provide that experts, other than officials coming within the scope of article V, shall be accorded privileges and immunities necessary to enable them to carry out their missions for the United Nations and specifies a number of those privileges and immunities.

9. Experts on mission may be retained by way of a contract known as a consultant contract, which sets out the terms of their appointment and the tasks that they must discharge. Other individuals may have the status of experts on mission if they are designated by United Nations organs to carry out missions or functions for the United Nations such as rapporteurs of the Commission on Human Rights or members of the International Law Commission.

Privileges and immunities applicable to officials other than Secretariat officials and experts on mission

10. In accordance with article V, sections 20 and 21 of the General Convention, it is the Secretary-General alone who may decide whether privileges and immunities in a particular case apply, and whether they should be waived.

11. In its advisory opinion of 29 April 1999, the International Court of Justice had recognized that "the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity" (para. 60).

12. Regulation 1 (e) provides as follows: "[t]he privileges and immunities enjoyed by the United Nations by virtue of Article 105 of its Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to those who are covered by them to fail to observe the laws and police regulations of the State in which they are located; nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, an official or an expert on mission shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived, in accordance with the relevant instruments. The Secretary-General should

inform and may take into account the views of the legislative bodies that appointed the officials or experts on mission”.

13. On 17 November 2006, the Under-Secretary-General for Legal Affairs, the Legal Counsel, made a statement in the Fifth Committee replying to questions posed by the Bureau of the Fifth Committee pertaining to the waivers of immunity from legal process by the Secretary-General with regard to the two cases noted below. In the course thereof, the Legal Counsel provided a legal analysis of the relationship between the General Convention and the Regulations adopted by the General Assembly (see A/C.5/61/SR.22).

Cases of waiver of immunity of officials other than Secretariat officials and experts on mission

14. In all instances, the Secretary-General follows the normal practice of waiving immunity when he determines, according to the merits of a particular case, that immunity would impede the course of justice and that it could be waived without prejudice to the interests of the United Nations.

15. Since the adoption of General Assembly resolution 3188 (XXVIII), two requests to waive the immunity of United Nations officials other than Secretariat officials have been received and waivers have been granted.

16. On 1 September 2005, the Secretary-General waived the immunity from legal process of the then serving Chairman of the Advisory Committee on Administrative and Budgetary Questions at the request of the United States Mission to the United Nations. The reasons for the waiver were serious United States federal criminal charges relating to money-laundering in violation of United States laws. On 9 September 2005, the Secretary-General addressed a letter to the President of the General Assembly informing him of the United States request, the applicable legal provisions and the reasons for the waiver and indicating that, in accordance with the Organization's existing procedures in cases of arrest or detention of United Nations officials, the assistance of the competent United States authorities had been requested with a view to facilitating a visit by a United Nations official.

17. On 7 November 2005, the Secretary-General waived the immunity from legal process of a Joint Inspection Unit Inspector at the request of the competent law enforcement authorities. The reasons for the waiver were grave allegations of a criminal nature which were being investigated by the Swiss law enforcement authorities. In view of the seriousness and sensitivity of the allegations, the request has been conveyed to the United Nations on a strictly confidential basis. On 3 March 2006, the Legal Counsel addressed a confidential communication to the President of the Joint Inspection Unit requesting the latter to transmit to the Inspector concerned a confidential letter explaining, on behalf of the Secretary-General, the reasons why the decision to waive had not been brought to the attention of the General Assembly.

18. As paragraph 3 of the Regulations indicates, a wide variety of functions are performed for the United Nations by persons retained as experts on mission. The Secretary-General has routinely waived the immunity of experts on mission to permit them to testify in court or other legal proceedings as witnesses. The immunity of experts on mission has also been waived, or deemed not to apply, for other reasons such as to permit civil or criminal proceedings. However, there have

been no cases to date where the immunity of a special rapporteur has been waived to permit civil or criminal proceedings although on one occasion, it was determined that immunity did not apply.

III. Applicability of the financial disclosure requirement to officials other than Secretariat officials and experts on mission

19. Regulation 2 (i) provides as follows: "Officials and experts on mission shall file financial disclosure statements if requested to do so by the Secretary-General. The Secretary-General shall prescribe the format and information to be provided in such statements and shall establish procedures for filing them. The financial disclosure statements will remain confidential and will be used, as prescribed by the Secretary-General, only in making determinations pursuant to regulation 2 (h). It will be for the Secretary-General, in due consultation with the appointing authority in the case of officials not appointed by the Secretary-General, to judge whether a particular fact has given rise to a conflict-of-interest situation".

20. Responsibility for the implementation of the financial disclosure programmes rests with the Ethics Office, which will be submitting a separate report on its activities to the General Assembly. The Ethics Office is in the process of conducting a review whether financial disclosure statements should be required of officials other than Secretariat officials and experts on mission with fiduciary role. Regulation 2 (i) gives the Secretary-General the authority to introduce such a requirement, to determine the procedures applicable and, in due consultation with the appointing authority in the case of officials not appointed by the Secretary-General, to judge whether their functions and interface give rise to potential conflict of interest. Given the policy-setting or oversight roles, and the independence of the bodies and status of the members involved, careful consideration must be given to the question as to the need for an appropriate financial disclosure system for their members.

IV. Conclusion

21. The Secretary-General invites the General Assembly to take note of the present report.